

15 MAG 4032

Approved: _____

ANDREW D. BEATY
Assistant United States Attorney

Before: HONORABLE JAMES L. COTT
United States Magistrate Judge
Southern District of New York

- - - - - X
UNITED STATES OF AMERICA : COMPLAINT
:
: Violations of 18 U.S.C.
- v. - : §§ 2422(b); 2251(a), (e),
: and (2); and
ELLIOT HALBERSTAM, : 2252A(a)(2)(B) and (b)(1)
:
Defendant. : COUNTY OF OFFENSE:
: NEW YORK
- - - - - X

SOUTHERN DISTRICT OF NEW YORK, ss.:

AARON E. SPIVACK, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE

(Coercion and Enticement of a Minor to
Engage in Illegal Sexual Activity)

1. From at least in or about March 2015, up to and including at least in or about July 2015, in the Southern District of New York and elsewhere, ELLIOT HALBERSTAM, the defendant, unlawfully, willfully, and knowingly, did use a facility and means of interstate and foreign commerce to persuade, induce, entice, and coerce an individual who had not attained the age of 18 years ("Victim-1") to engage in sexual activity for which a person can be charged with a criminal offense, and attempted to do so, to wit, HALBERSTAM used a computer and the Internet to persuade, induce, entice, and coerce Victim-1, a minor, to send images, videos, and live visual depictions of Victim-1 engaging in sexual activity to HALBERSTAM over the Internet.

(Title 18, United States Code, Section 2422(b).)

COUNT TWO

(Sexual Exploitation of a Child)

2. From at least in or about March 2015, up to and including at least in or about July 2015, in the Southern District of New York and elsewhere, ELLIOT HALBERSTAM, the defendant, willfully and knowingly did employ, use, persuade, induce, entice, and coerce a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, and for the purpose of transmitting a live visual depiction of such conduct, knowing and having reason to know that such visual depiction would be transported and transmitted using a means and facility of interstate and foreign commerce, and in and affecting interstate and foreign commerce, which visual depiction was produced and transmitted using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, and was actually transported and transmitted using a means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce, to wit, among other things, HALBERSTAM took sexually explicit photographs of Victim-1, who during the time period was 16 years' old, and induced Victim-1 to send sexually explicit images of Victim-1 to HALBERSTAM by cellphone messages.

(Title 18, United States Code, Sections 2251(a), (e), and 2.)

COUNT THREE

(Receipt of Child Pornography)

3. From at least in or about March 2015, up to and including at least in or about July 2015, in the Southern District of New York and elsewhere, ELLIOT HALBERSTAM, the defendant, knowingly did receive and distribute material containing child pornography that had been mailed, and using any means and facility of interstate and foreign commerce shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, to wit, HALBERSTAM received by cellphone messages live video images sent from a minor under the age of 18 containing sexually explicit images of the minor.

(Title 18, United States Code, Sections
2252A(a)(2)(B) and (b)(1).)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

4. I have been a Special Agent with the FBI since October 2008. I am currently assigned to the Crimes Against Children squad in the FBI's New York Field Office. I have been assigned to investigate violations of criminal law relating to child exploitation and child pornography, and I have received training regarding these cases. This affidavit is based upon my personal participation in the investigation of this matter, my conversations with other law enforcement agents and witnesses, my conversations with Victim-1 and Victim-1's mother, and my examination of reports and records. Because this affidavit is submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

Definitions

5. The following terms have the indicated meaning in this Complaint:

a. The terms "minor," "sexually explicit conduct," and "visual depiction," as used herein, are defined as set forth in Title 18, United States Code, Section 2256.

b. The term "child pornography," as used herein, is a visual depiction of a minor involved in sexually explicit conduct as defined in Title 18, United States Code, Section 2256(8).

The HALBERSTAM Investigation

6. Based on my personal involvement in this investigation, my conversations with other law enforcement officers, my review of photographic and electronic records and documents, my review of messages between ELLIOT HALBERSTAM, the defendant, and Victim-1 sent via email and text message, my review of documents maintained by law enforcement, and my own interview of Victim-1 and Victim-1's mother, I have learned, in substance and in part the following:

a. Beginning in or about 2011, through in and about 2014, Victim-1 was a therapy patient of HALBERSTAM's, who works as a child therapist.

b. Beginning in or about 2014, HALBERSTAM began exchanging text messages with Victim-1. From in or about at

least March 2015, those communications began to include sexually explicit content.

c. According to Victim-1, HALBERSTAM requested that Victim-1 send photographs and videos of Victim-1 naked and masturbating. Victim-1 obliged, and sent numerous photos and videos to HALBERSTAM by text message.

d. On multiple occasions, in or about May and June 2015, HALBERSTAM engaged in oral sex with Victim-1 and photographed himself doing so. HALBERSTAM also took photographs of Victim-1 naked and masturbating.

e. In or about March 2015, HALBERSTAM also introduced Victim-1 to the email account shuazdavis@gmail.com (the "Sham Account"). An individual using the Sham Account — purporting to be a different person than HALBERSTAM — began communicating with Victim-1 about Victim-1's interest in modeling. As detailed below, the Sham Account was used to solicit Victim-1 to send photographs and videos of Victim-1 naked and masturbating to HALBERSTAM.

7. For the reasons detailed below, I believe the Sham Account is used and controlled by ELLIOT HALBERSTAM, the defendant.

a. I have reviewed subscriber information obtained from Google pursuant to a grand jury subpoena. From my review of those records, I have learned the following:

i) The Sham Account was created on March 13, 2015, at approximately the same time the Sham Account began to be used to communicate with Victim-1.

ii) The Sham Account is registered in the name "Joshua Davis."

iii) Internet Protocol ("IP") address information associated with the Sham Account resolves back to locations in New Jersey, Brooklyn, and the United Kingdom.

b. I have reviewed IP address subscriber information obtained from Verizon, Inc. From my review of those records, I have learned that one of the IP addresses used to access the Sham Account is associated with a Verizon subscriber using the name "AND HALBERSTAM"; HALBERSTAM's current address; and an email address registered to HALBERSTAM.

c. I have also reviewed HALBERSTAM's travel records, and I know that he was in London, United Kingdom, during the time period that the Sham Account was accessed using IP addresses from the United Kingdom.

Search of the Sham Account

8. On or about August 19, 2015, the Court issued a search warrant for the contents of the Sham Account. I have reviewed emails from the Sham Account and other accounts, and have learned, in substance and in part, the following:

a. The user of the Sham Account represented himself to Victim-1 to be a lawyer in Hong Kong named "Joshua Davis." As noted above, none of the IP addresses associated with the Sham Account resolve to Hong Kong.

b. Nearly all of the emails in the Sham Accounts are between the Sham Account, Victim-1, and various email accounts used by ELLIOT HALBERSTAM, the defendant. With the exception of a few automatically generated emails (for example, from Google), no other email accounts communicate with the Sham Account.

c. In my training and experience, the emails appear to be designed to groom Victim-1 for sexual activity with HALBERSTAM and to induce Victim-1 to send photographs and videos of Victim-1 masturbating to HALBERSTAM. Specifically, under the guise of preparing Victim-1 for a career in modeling, the user of the Sham Account offered advice and encouraged Victim-1 to take nude photos and videos of Victim-1. At the request of the user of the Sham Account, Victim-1 sent redacted versions of those photos, with the genitalia blacked out, to the Sham Account. Over time, the emails began to include HALBERSTAM, and the user of the Sham Account encouraged Victim-1 to send un-redacted nude videos and photos to HALBERSTAM. The user of the Sham Account also facilitated "photo shoot" sessions at hotels, at which HALBERSTAM photographed Victim-1, ostensibly for Victim-1's modeling application. Those photo shoots included clothed photos, nude photos, photos in which Victim-1 is masturbating, and photos of HALBERSTAM performing oral sex on Victim-1.

d. In addition to the Sham Account, HALBERSTAM used at least three different email accounts to communicate with Victim-1. The first of these ("Halberstam Email-1") is registered using HALBERSTAM's name, address, and cellphone number.

e. On or about April 6, 2015, in an email communication to Victim-1 and to Halberstam Email-1, the user of the Sham Account stated the following with respect to setting up a photo shoot for HALBERSTAM and Victim-1:

1) [Victim-1] would benefit from a couple shots whiskey or other booze (baileys? [Victim-1] you have a pref?) to help him loosen up

2) [Victim-1] will need to have baby oil applied, have his underwear arranged and be prepared to have his body parts touched and moved. As uncomfortable as this may be, E you will need to be able to do this. [Victim-1] and I are aware that you may have reservations but..

3) A ***typical*** [Victim-1] solo shoot has him do hardcore pics. I'm ***NOT*** suggesting that be part of Monday's shoot but [Victim-1] is prepared to be photographed "soft" porn. Again, please put reservations and prudishness aside.

f. On or about April 8, 2015, in an email communication to the Sham Account, Victim-1 stated, "we agreed there wouldn't be porn shots this time. I'm confused." Thereafter, the user of the Sham Account responded, "We agreed to soft porn. Remember?"

g. On or about April 16, 2015, in an email communication to Victim-1, the user of the Sham Account stated, "Take a video of yourself but this is the ***best*** way for you to see what ***you*** look like when you are actually ***having*** sex. Even when you j/o. Include your cum shot." In response, Victim-1 wrote, "I'm uncomfortable...." Thereafter, Victim-1 sent several redacted photographs of Victim-1 nude to the Sham Account. In response, over the course of several emails, the user of the Sham Account wrote:

Those fucking last 2 pics. Pure fucking beauty. [Victim-1] how have you hidden that asset from our shoots?! Stroke of fucking genius taking that view. Your ass is a work of art. I'm un comfortable and unable to stand up in court.

However you are NOT even hard in your cock pics?!? Why not?

I wanted to much to give you an A. You ass gets A- your cock gets B- so you don't get your A average yet.

You show more potential each day. You need me to send you some real porn [Victim-1].

h. On or about April 22, 2015, in a series of email communications to Victim-1, the user of the Sham Account wrote the following:

Before finalizing Monday - how *far* you willing to go with the horny stuff at the rehearsal?

How do you define "pretty far" - can he film your *video* for example? That would be the last of your prudishness gone.

So we are all on board. Be prepared to have him film your cum shot. Not to sure *when* we show break that to him. You or me?

You *need* to lose your *cherry* - no, no *actual* fucking yet, but you need your first blow-job.

I know - *I* *KNOW* how *uncomfortable* the last shoot went when our pal tried to do something *horrible* to you.

My suggestion is you *invite* him to blow you this time. Nothing *romantic* or *attraction* based. He will *destroy* me if he knew I was telling you this but he *LOVES* giving head (I wish, I *WISH*!) and you have a *wonderful* "tool" to give head to.

i. On or about April 23, 2015, the user of the Sham Account emailed Halberstam Email-1 and Victim-1 with instructions for a photo shoot to be held in a hotel ostensibly

paid for by "Joshua Davis," the user of the Sham Account. Those instructions included:

- i) "Alcohol to take the edge off"
- ii) "[HALBERSTAM] will be touch [Victim-1] *everywhere*, applying baby oil, 'adjusting' his semi etc."
- iii) "First shots: Porn. These will be your sexy shots to set the mood. You don't [sic] need my input for these shots/video, you both *know* what to do."
- iv) In response, HALBERSTAM emailed the user of the Sham Account and Victim-1, among other things: "I will bring the alcohol I'm OK to do whatever needs to be done, whatever level."

j. Over the course of these exchanges, HALBERSTAM received and critiqued numerous videos of Victim-1 masturbating, which were solicited by the user of the Sham Account. For example, on or about April 26, 2015, the user of Subject Account-1 acknowledged in an email to the Sham Account and Victim-1 having received a video of Victim-1 masturbating. The previous "assignment" to Victim-1 from the Sham Account included detailed instructions, such as to "focus just on your *cock*" and to "capture cum shot." Thereafter, HALBERSTAM responded to the Sham Account and Victim-1 with a review of the video: "It's sexy as fuck, he does everything. The movements, the noises and ... I know this is what you wanted - he comes I [sic] close for the 'finish.'"

k. In addition to emails, I have reviewed excerpts from text messages exchanged between a cellphone used by HALBERSTAM (the "HALBERSTAM Cellphone") and Victim-1. Those messages include the following messages from HALBERSTAM, which reflect, among other things, that HALBERSTAM had been reviewing videos of Victim-1:

I'm not gonna be able to stand for 20 minutes
(excerpt from myreview [sic])
Holy fuck
and that cum shot?!?! Wow!!! My god i think I'm in love

I can't wait until I eat you out, lick you out, French
you and swallow your full vanilla flavored load

l. Beginning in or about May 2015 and continuing through in or about June 2015, HALBERSTAM began using a

different email account ("Halberstam Email-2") to communicate with the Sham Account and with Victim-1. Halberstam Email-2 was not in HALBERSTAM's name, which, in my training and experience, I believe to be an attempt to disguise his identity. However, based on my interviews with Victim-1, I know that Halberstam Email-2 was used to communicate with Victim-1 for approximately a year before Victim-1 began communicating with the Sham Account.

m. On or about May 7, 2015, HALBERSTAM emailed the Sham Account with another "review" of a video of Victim-1 masturbating. It included comments on Victim-1's "[b]ody movements," "[s]ound," and "[c]um shot." HALBERSTAM wrote that Victim-1 "has a beautiful, lean, muscular body," and that the video "was a real turn on."

n. On or about May 7, 2015, HALBERSTAM emailed the Sham Account and Victim-1 a message that said, among other things: "Actually currently trying to use my amazing grooming techniques to convince and lure another teenager into coming to a hotel room and get blown. Working amazingly well. Apparently I'm an expert at it."

o. On or about May 8, 2015, the user of the Sham Account emailed Victim-1 a message that said, among other things, "You gotta get that fucking ass in your videos. Film it full on. Film it thrusting. You have a *hot* ass and he's right that you need to film it."

p. On or about May 7, 2015, HALBERSTAM emailed the Sham Account and Victim-1 a message with a review of another video of Victim-1 masturbating. The message said, among other things:

This is literally an awesome, outstanding video.

He has taken literally every single piece of feedback and made something amazing.

If I could forget that he's my best friend I would be doing terrible things to myself with this material.

And I mean that in the best possible way

Truly epic. He swings his hips. Shows his cute butt. The abs are in constant display. And the final shot is mouth watering

Amazing.

q. On or about May 11, 2015, the user of the Sham Account emailed Victim-1 a message with instructions for a video that said:

For tonight's.

Thankfully our pal gave some *great* feedback so you know where to place your focus tonight.

More ass shots and (this is something I could see from the still shots) get in close for the cum shot. In your lying down videos last week you perfected the close up for this - do the same for the stand up video. Get in close and film it. Also, as per our pal, do a close up of the "puddle" once you are done.

Got this?

r. Based on my review of emails exchanged between the user of the Sham Account and Victim-1, I believe "our pal" to refer to HALBERSTAM.

s. On or about May 11, 2015, HALBERSTAM emailed the Sham Account and Victim-1 a message that stated:

We have a lot to "make up" for.

We will do the rehearsal pics.

We will do the "mission" but with one caveat. I need to make up as well for the failed video. I will therefore do most of the "mission" but stop and then N and I will reshoot the video with the erm ending.

Ok?

t. Based on my review of emails exchanged between the user of the Sham Account and Victim-1, I believe the "mission" to refer to the instruction from the user of the Sham Account that Victim-1 engage in oral sex with HALBERSTAM.

u. On or about May 11, 2015, HALBERSTAM emailed the Sham Account and Victim-1 a message that refers to "pick[ing] [Victim-1] up and instead of going to a local hotel I'll take him to my private practice office." From my involvement in this investigation and from my interview with Victim-1, I believe this to be a reference to HALBERSTAM's private therapy office in Englewood, New Jersey.

v. Based on my interview with Victim-1, I know that HALBERSTAM engaged in oral sex with Victim-1 on at least one occasion at HALBERSTAM's Englewood office.

w. On or about May 13, 2015, Victim-1 emailed the Sham Account photographs of what appears to be HALBERSTAM performing oral sex on Victim-1, what appears to be HALBERSTAM with semen in his mouth, and redacted photos of Victim-1 masturbating to completion. The subject line of the email is "Mission accomplished."

x. On or about May 13, 2015, the user of the Sham Account emailed Victim-1, berating him for not ejaculating into HALBERSTAM's mouth, which said, among other things:

Let me remind you.

You never wanted to do the porn shots.

Then you lied and said you were hard in your edited pics.

But it was OBVIOUS when you were not.

Then you started taking *REAL* horny shots.

Your prudishness started to dissipate.

Your model shots soared.

Then you didn't want to make videos. You made up BULLSHIT that you did them and lied to me with our pal.

And then what happened?? You *MADE* the vids.

And then your prudishness disappeared more and your shots improved more.

I know you think I'm such an ASSHOLE for insisting on this mission.

You had *HALF* the BJ and these pics are fucking BADASS.

TRUST me here [Victim-1]. Fulfill and finish the deed. Don't try to BULLSHIT me with this.

Do it for REAL.

Do it for YOU.

Do it NEXT TIME.

You know how fucking *amazing* it feels.

Break through the barrier. Let go of your conscience. Ease out of your prudishness.

You will break the fucking bank when you overcome this.

y. On or about May 18, 2015, the user of the Sham Account emailed Victim-1 a message with the subject line "Immediate Mission" that stated:

Three bare ass pics. One of you naked but showing your ass off full view.

One side view ass and you holding cock

One other side view holding cock.

Show your ass as perfect.

Got it?

z. Approximately two hours later, Victim-1 responded by sending the requested photographs, with his genitals redacted, to the Sham Account.

aa. On or about May 22, 2015, HALBERSTAM emailed the Sham Account with another "review" of a video of Victim-1 masturbating. It describes an "awesome video," that includes "the J/O," as "OMG spine tingling hot with the epic cumshot." In my training and experience, I know that "J/O" is a common abbreviation for "jerking off" or "jacking off," both slang terms for masturbating.

bb. On or about May 27, 2015, the user of the Sham Account emailed Victim-1 a message that stated:

Get you ass in there - this time *really* get it in... You want a part of the video to show your ass while you are pumping.

As you are sweaty you want some closeups of the sweat, on your head, on your body, especially on your *abs*.

Do the beginning of the video standing, showing your sweaty body off, showing your ass off etc.

Then lie down for the finishing shot, get a close up of the cumshot, make sure to *REALLY* capture the explosion.

As our pal has said, linger after the cumshot, show the puddle, show you squeezing the cum out of your cock, don't abruptly end.

Do the noises, moan, say "I'm cumming" before you shoot your load.

You have the house to yourself so you can lose all the inhibitions and make an *A++* today :)

cc. On or about June 5, 2015, HALBERSTAM emailed the Sham Account with another "review" of a video of Victim-1 masturbating. It stated:

OMFG. OMFG. OMFG.

I literally won't be able to stand up for another 20 minutes!!

He did this in 2 parts. The standing part was amazing. But then towards the end he did this move - sideways, butt and dick showing, and he starts thrusting. OMFG Shu, he literally looks like a fucking sex god. He exudes confidence and thrusts with this swagger that's sexy and "owning" his own body. Like a work of art.

Then part 2 is him lying down. It's really great how he filmed it. Again, he owns his moves and you can hear he's enjoying himself. But then, the ending is just, almost impossible to describe. He is close to the end and then says "I'm gonna cum" and the most epic closing shot he's ever done.

This, in my opinions is A+

dd. Shortly thereafter, the user of the Sham Account forwarded HALBERSTAM's review to Victim-1.

ee. On or about June 18, 2015, Victim-1 again emailed the Sham Account photographs of what appears to be HALBERSTAM performing oral sex on Victim-1. The subject line of the email is "Mission Accomplished."

ff. I have reviewed IP addresses associated with the Sham Account, and I know that a number of the emails soliciting photographs and videos constituting child pornography were sent from New York City, including New York, New York.

Search of Halberstam Email-3

9. In addition to emails contained in the Sham Account, I have reviewed emails and documents in another account I believe to be used and maintained by ELLIOT HALBERSTAM, the defendant ("Halberstam Email-3").

a. On or about April 17, 2015, the user of Halberstam Email-3 emailed the Sham Account with a link to a video stored on Google Drive. This email was sent the same day that the Sham Account and Victim-1 exchanged emails discussing sending HALBERSTAM a video of Victim-1 masturbating.

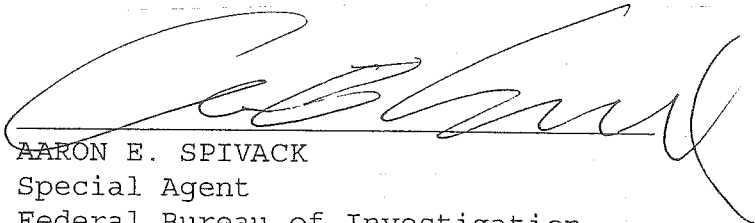
b. According to documents I have received from Google, Inc., Halberstam Email-3 lists one of HALBERSTAM's email accounts as the recovery email address. In addition, many of the IP addresses used to access Halberstam Email-3 are the same IP address associated with HALBERSTAM's residence.

10. On or about October 1, 2015, the Court issued a search warrant for the Halberstam Email-3 account and the associated Google Drive. I have reviewed those emails and files, and have learned the following:

a. The Google Drive associated with Halberstam Email-3 contains more than 30 unredacted videos of Victim-1 masturbating that, based on my training and experience, constitute child pornography.

b. Based on my interviews with Victim-1, I believe that some of these photographs of Victim-1 were taken by ELLIOT HALBERSTAM, the defendant, at hotel rooms and in HALBERSTAM's Englewood therapy office.

WHEREFORE, the deponent respectfully requests that ELLIOT HALBERSTAM, the defendant, be imprisoned or bailed, as the case may be.



AARON E. SPIVACK
Special Agent
Federal Bureau of Investigation

Sworn to before me this
10th day of November 2015

HONORABLE JAMES L. COTT
United States Magistrate Judge
Southern District of New York